IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MFA (W.C.ACT).No. 64 of 2006() & C.O.NO.4 OF 2007

WCC.32/1992 of COMMISSIONER FOR WORKMEN'S COMPENSATION,THRISSUR

.....

APPELLANT: (LEGAL HEIR OF 3RD OPPOSITE PARTY)

SHOBHA G.NAIR, WIFE OF P.GOVINDANKUTTY,
SHOBHA NIVAS, S.AMBALLOOR,ERNAKULAM.

BY ADV. SRI.P.RAMAKRISHNAN
SRI.T.C.KRISHNA

RESPONDENTS: (APPLICANT & OPPOSITE - PARTIES 1 AND 2)
---

1. SUDARSAN, SON OF SHANMUGHAN,
KIZHAKKEPURATHUKUDI,KADAPPARA DESOM,
ALWAYS.

2. NASSAR, SON OF CHALAKKAI @ MUKKALAL
MAKKARU,PALLARIMANGALAM KARA,
POTHANIKKAD VILLAGE,KOTHAMANGALAM TALUK.

3. UNITED INDIA INSURANCE COMPANY LIMITED,
TRIPUNITHURA.

BY ADV. SRI.M.A.HAKIM SHAH
SRI.K.A.ABDUL SALAM
SRI.SUBHASH CYRIAC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/06/2007, ALONG WITH CO NO.4 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.650 OF 2006 IN M.F.A.(W.C.ACT)NO.64 OF 2006

DISMISSED

11.6.2007

SD/- J.B.KOSHY, JUDGE.
SD/- K.P.BALACHANDRAN, JUDGE.

// TRUE COPY //

TKS

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.(W.C.Act) No.64 OF 2006
and
C.O.No.4 of 2007

Dated 11th June, 2007

JUDGMENT

Koshy,J.

First respondent in this appeal was employed as a Mahout. He filed an application before the Commissioner for Workmen's Compensation contending that while he was employed by the second respondent in this appeal, he sustained injuries due to an accident arising in the course of employment and he is entitled to compensation. Thereafter, he filed an impleading petition impleading the present appellant and third respondent insurance company as parties on the ground that predecessor of the appellant was originally the owner and she had insurance policy. After impleading, the appellant did not file any counter. It is the case of the appellant that she entrusted the matter to the counsel appearing for the second respondent as transfer of the elephant before the accident was not questioned and even according to the first respondent claimant he was employed by the second respondent and not by the appellant. But, the Tribunal found that though there was insurance policy it was not covering the Mahout, but, only third parties and, therefore, insurance company has no liability. Thereafter, the Commissioner awarded a

compensation to be paid by the appellant. The real dispute is who is the employer of the first respondent. Merely because appellant remained ex parte we cannot presume that predecessor of the appellant was the employer at the time of the accident. We are of the opinion that the matter has to be looked into by the Commissioner, but, because of the dispute of ownership between the appellant and second respondent, interest of the claimant cannot be defeated. Therefore, the amount deposited shall be disbursed to the claimant. The question whether the appellant or the second respondent was the employer at the time of the incident shall be considered by the Commissioner. If it is found that appellant was not the employer and second respondent was the employer at the time of the incident, appellant is entitled to get the amount reimbursed from the second respondent and if such a finding is entered into, the award can be executed by the Commissioner without insisting on filing a separate application by the claimant. The matter is remanded to decide the question regarding the ownership. The question whether Mahout was covered or not by the insurance policy is also to be decided because even if there was transfer, taking the analogy that if there was coverage of motor vehicles, if the vehicle is transferred, notwithstanding the transfer of the vehicle insurance

company is liable, if there was valid policy on the elephant at the time of accident, transfer of ownership may not be relevant. Terms of the policy has to be considered in detail to find out whether Mahout was covered under the policy. Parties shall appear before the Commissioner on 6.8.2007. Parties are also allowed to adduce further evidence before the Commissioner. Commissioner has to decide who was the real employer of the elephant at the time of accident. If Mahout was not covered under the insurance policy, only actual employer on the date of the accident can be made liable. If there was insurance policy on the elephant and Mahout was covered, then insurance company also can be made liable.

2. Cross Objection is filed stating that interest was not awarded. It is contended by the appellant that she is not disputing the quantum of compensation. The only dispute is regarding the ownership. In any event, a cross objection is not permitted to be filed under the Workmen's

Compensation Act. Hence, cross objection is dismissed.

The appeal is disposed of accordingly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

tks